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if the defendant is not a resident of the state, the suit may be brought in the county or corporation in which the plaintiff resides; "domicile" being a residence in a particular place, accompanied by an intention to remain there for an unlimited time.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. §§ 200-202, 208-216, 220, 282; Dec. Dig. § 62.\* 4 Va.-W. Va. Enc. Dig. 747.]

Appeal from Circuit Court, Rockingham County.

Suit by Carrie Steckel against William E. Steckel for divorce. From a decree of dismissal, plaintiff appeals. Reversed and rendered.

*Charles A. Hammer*, of Harrisonburg, for appellant.

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OSBORN *v.* DARBY COAL MINING CO.

Nov. 11, 1915.

[86 S. E. 834.]

**1. Master and Servant (§ 150\*)—Liability for Injuries—Warning of Danger.**—Notwithstanding a mineowner's right to abandon parts of its mine, which it had completed according to its plan of work, where there were no visible indications of the abandonment of a place, it was its duty to give notice and warning to employees, who, having no knowledge of the abandonment, would be likely to be led into such place in the performance of their duties.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 297, 299-302, 305-307; Dec. Dig. § 150.\* 9 Va.-W. Va. Enc. Dig. 686.]

**2. Master and Servant (§ 278\*)—Actions for Injuries—Sufficiency of Evidence.**—In an action for injuries to a mine employee, injured by a fall of slate in a part of the mine which defendant claimed had been completed according to its plans and abandoned, evidence as to whether plaintiff was directed to work at such place held to support a verdict in his favor.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 954, 956-958, 960-969, 971, 972, 977; Dec. Dig. § 278.\* 9 Va.-W. Va. Enc. Dig. 725.]

Error to Circuit Court, Lee County.

Action by G. F. Osborn against the Darby Coal Mining Company. After a verdict for plaintiff, subject to a demurrer to the evidence, the demurrer was sustained, and judgment rendered for defendant, and plaintiff brings error. Reversed, and judgment entered on the verdict.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

*C. R. McCorkle*, of Appalachia, and *E. M. Fulton*, of Wise, for plaintiff in error.

*Bullitt & Chalkley* and *R. T. Irvine*, all of Big Stone Gap, for defendant in error.

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DENNY *v.* DENNY.

Nov. 11, 1915.

[86 S. E. 835.]

**1. Divorce (§ 37\*)—Grounds—Cruelty.**—Cruelty on the part of a husband, resulting in the wife's enforced separation from his bed and board, and continued for three years prior to the decree, entitles the wife to a divorce as for desertion.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. §§ 27, 107-134, 136-138; Dec. Dig. § 37.\* 4 Va.-W. Va. Enc. Dig. 736.]

**2. Divorce (§ 298\*)—Custody of Children—General Rule.**—Where the ages of the children, the financial condition of the parties, and the other facts and circumstances show no sufficient reason for departing from the general rule, the father, upon the granting of a divorce, is entitled to the custody of the children, subject to such provisions as the court may make as to allowing the wife access to the children at prescribed times and places.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. §§ 781-787; Dec. Dig. § 298.\* 4 Va.-W. Va. Enc. Dig. 752.]

Appeal from Circuit Court, Augusta County.

Suit for divorce by Imogen B. Denny against Victor L. Denny. From a decree dismissing the bill, complainant appeals. Reversed and remanded.

*Jeffries & Jeffries* and *O. L. Shackelford*, all of Norfolk, and *C. M. East*, of Staunton, for appellant.

*Timberlake & Nelson*, of Staunton, for appellee.

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FRANKLIN PLANT FARM, Inc. *v.* NASH et al.

Nov. 11, 1915.

[86 S. E. 836.]

**1. Landlord and Tenant (§ 76\*)—Assignment of Lease—Consent by Landlord.**—Under a lease forbidding subletting without the written consent of the lessors, the acts of the lessors in procuring their wives to sign the original lease so that the assignee would accept the assignment, in accepting rent from the assignee and receiving

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.